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State v. Gonzalez Respondent's Brief Dckt. 44534

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44534
Plaintiff-Respondent,)	
)	Bannock Co. Case No.
vs.)	CR-2015-15275
)	
ZUATNEY GONZALEZ,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BANNOCK**

**HONORABLE ROBERT C. NAFTZ
District Judge**

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STATEMENT OF THE CASE

Nature Of The Case

Zuatney Gonzalez appeals from the judgment entered upon her convictions for two counts of criminal possession of a financial transaction card. She challenges the district court's order granting her credit for time served from the date of her arrest on the charges until entry of judgment.

Statement Of The Facts And Course Of The Proceedings

The state filed a criminal complaint charging Gonzalez with criminal possession of a financial transaction card, burglary and grand theft. (R., pp. 7-8.) A magistrate issued an arrest warrant, which was served on March 3, 2016. (R., pp. 9, 19.)

The state thereafter filed an information charging criminal possession of a financial transaction card, burglary and grand theft. (R., pp. 38-39.) Pursuant to a plea agreement, Gonzalez pled guilty to two counts of criminal possession of a financial transaction card, the second charge being an amendment of the grand theft charge. (R., pp. 56-66.) The district court imposed sentences of five years with one year determinate, concurrent with each other and with sentences imposed in Canyon County. (R., pp. 77-79.) The district court awarded credit for "time served in the Bannock County Jail on this charge." (R., p. 78.)

Gonzalez filed a Rule 35 motion seeking credit for time served. (R., pp. 84-85.) Gonzalez alleged she was arrested in Canyon County on September 28, 2015; that the warrant in this case issued October 21, 2015; and that she remained incarcerated in Canyon County until March 9, 2016, when she was transported to Bannock County. (R., pp. 84-87.) She requested credit for time served from the issuance of the arrest warrant

(October 21, 2015) until she was in custody in Bannock County on March 9, 2016. (R., p. 84.)

The district court granted the motion for credit for time served in part. (R., pp. 90-95.) The district court found that Gonzalez was arrested in Canyon County on September 28, 2015, and charged with several theft-related counts there. (R., p. 93.) The complaint in the instant case was filed in Bannock County on October 21, 2015. (Id.) The arrest warrant in this case was served on Gonzalez on March 3, 2016. (R., p. 94.) Gonzalez was sentenced on the Canyon County matters on March 7, 2016. (R., p. 93.) After applying the relevant legal standards, the district court concluded that time in custody prior to March 3, 2016, was attributable to the Canyon County charges. (R., pp. 94-95.) The district court concluded that Gonzalez was entitled to credit for pre-judgment time served from March 3, 2016, the date of service of the arrest warrant in this case, until May 2, 2016, the date of sentencing in this case. (R., p. 95.)

Gonzalez filed a timely notice of appeal from the order partially denying her motion for credit for time served. (R., pp. 99-101.)

ISSUE

Gonzalez states the issue on appeal as:

Did the district court err when it denied Ms. Gonzalez's motion for credit for time served?

(Appellant's brief, p. 4.)

The state rephrases the issue as:

Gonzalez' motion sought credit for time served from the date of issuance of the warrant until her transfer to Bannock County. The district court awarded time served from the service of the arrest warrant until sentencing. On appeal Gonzalez seeks credit from the time the Canyon County jail was notified of the existence of the warrant. Is Gonzalez' appellate claim not preserved because it was not raised below?

ARGUMENT

Gonzalez’ Appellate Claim Is Not Preserved Because It Was Not Raised Below

A. Introduction

In her motion before the district court, Gonzalez sought “credit for the time sat [sic] in Canyon County from October 21, 2015, (date of warrant) to March 9, 2016, (transferred to Bannock County) for a total of 134 days.” (R., p. 84.) The district court awarded Gonzalez credit for pre-judgment incarceration from the service of the arrest warrant until the entry of the judgment. (R., pp. 90-95.) On appeal Gonzalez abandons the theory she presented below and claims she is entitled to credit from December 11, 2015, the date she claims she was “being held in Canyon County, on the Bannock County charges.” (Appellant’s brief, p. 5.) Because the theory Gonzalez presents on appeal was not presented to the district court, it is not preserved for appellate review.

B. Standard Of Review

“The interpretation of a statute is a question of law over which this Court exercises free review.” Simono v. House, 160 Idaho 788, 791, 379 P.3d 1058, 1061 (2016) (internal quotations omitted).

C. Gonzalez’ Claim That She Is Entitled To Credit For Time Served From The Time The Canyon County Jail Was Notified Of The Bannock County Warrant Is Not Preserved

“Issues not raised below will not be considered by this court on appeal, and the parties will be held to the theory upon which the case was presented to the lower court.” State v. Garcia-Rodriguez, 162 Idaho 271, ___, 396 P.3d 700, 704 (2017) (internal quotation omitted). The theory presented below was that Gonzalez was entitled to 134

days' credit for time served from the date the arrest warrant issued on October 21, 2015, until she was transferred to Bannock County to answer these charges on March 9, 2016. (R., p. 84 ("Defendant is asking for credit for the time sat [sic] in Canyon County from October 21, 2015, (date of warrant) to March 9, 2016, (transferred to Bannock County) for a total of 134 days.")) The theory presented on appeal is that Gonzalez is entitled to 82 days' credit for time served from December 11, 2015, the date she claims she was "held" on the Bannock County charges, until she was served with the warrant on March 3, 2016 (presumably in addition to the time granted by the district court). (Appellant's brief, p. 5.) Even a cursory comparison of the motion filed below to the argument raised on appeal shows they are based on different theories, and therefore the issue presented on appeal is not preserved for appellate review.

D. Even If Preserved, Gonzalez Has Failed To Show Error

"Statutory interpretation begins with the statute's plain language. That language is to be given its plain, obvious and rational meaning. If that language is clear and unambiguous, the Court need merely apply the statute without engaging in any statutory construction." State v. Flores, 162 Idaho 298, ___, 396 P.3d 1180, 1183 (2017) (internal quotations and citations omitted). Gonzalez was entitled to credit for time served for pre-judgment incarceration "if such incarceration was for the offense or an included offense for which the judgment was entered." I.C. § 18-309(1). This plain language "applies to all offenses that provide a basis for the defendant's incarceration." State v. Brand, 162 Idaho 189, ___, 395 P.3d 809, 812 (2017). Whether the offense provides a basis for the defendant's incarceration is determined by application of a two-part test:

first, the defendant must have been incarcerated during the intervening period **from when the arrest warrant was served** and the judgment of conviction was entered; and second, putting aside any alternative reason for the defendant's incarceration, **the relevant offense must be one that provides a basis for the defendant's incarceration.**

Id. at ___, 395 P.3d at 812-13 (bolding added). Gonzalez' incarceration in Canyon County prior to service of the arrest warrant in this case does not meet this test. Gonzalez was not incarcerated for the Bannock County charges until her arrest on the warrant issued in relation to those offenses.

Indeed, this case is indistinguishable from "Scenario 1" as laid out in Brand:

Defendant is already in custody on unrelated charges. He is served with an arrest warrant which requires defendant to post bail. Defendant does not post bail and remains in custody until sentencing. Defendant is entitled to credit **from the date of service of the warrant** through the date of sentencing.

Id. at ___, 395 P.3d at 813 (bolding added). The district court did not err by granting credit for time served from the date Gonzalez was served with the arrest warrant until the date she was sentenced.

Gonzalez argues that she should have been granted credit for time served starting on December 11, 2015, "for the time she was being held in Canyon County, on the Bannock County charges." (Appellant's brief, p. 5; see also pp. 8-9.) The first flaw in this argument is factual. As noted above, Gonzalez did not claim below that the December 11, 2015, date was relevant to her motion. (R., pp. 84-85; Tr., p. 36, Ls. 5-18.) Thus, the district court made no factual finding about what, if anything, happened or did

not happen on that date. (R., pp. 93-95.) On appeal she relies on one document,¹ apparently a jail record related to her custody in Canyon County, submitted with the motion to show her September 28, 2015, arrest date there. The document also contains an entry under the title “Holds” that provides a “Clearance Description” of “WENT TO BANNOCK COUNTY,” a “Code” of “Other County Hold,” an “Enter Date” of “12/11/2015 08:01 PM” a “Clear Date” of “03/09/2016 07:33 AM,” a “Clear By” “S PFEIFER” and an “Enter By” “K EDWARDS.” (R., p. 87.) Gonzalez’ claim this evidence of an entry of unknown provenance and unknown meaning is proof positive she was in custody on the Bannock County charges, even in the absence of further proof, the state’s opportunity to present evidence on the unraised claim, and the lack of factual findings by the district court, fails.

The second flaw in Gonzalez’ argument is legal. She relies substantively on the Brand opinion for her claim that she is entitled to credit for time served prior to her arrest on the charges in this case. (Appellant’s brief, pp. 7-8.) She acknowledges that the first prong of the test articulated in that case is “the defendant must have been incarcerated during the intervening period from when the arrest warrant was served and the judgment of conviction was entered,” but argues that this test somehow does not require service of the arrest warrant. (Appellant’s brief, pp. 7-8 (quoting Brand, 162 Idaho at ___, 395 P.3d at 813).) The district court made no error in starting the credit upon service of the arrest warrant, as specified in Brand, instead of at some time before that.

¹ Gonzalez also cites to another document that is apparently a minute sheet from the Canyon County case (Appellant’s brief, p. 8 (citing R., p. 20)) which was not submitted to the district court in relation to the motion for credit for time served. So not only is Gonzalez seeking to present a new theory, she is basing it on different evidence than her motion below.

Gonzalez cites no law for the proposition that entry of the notation “Other County Hold 12/11/2015 08:01 PM” in what appears to be Canyon County jail records constituted an arrest in this case. (Appellant’s brief, pp. 7-9.) Gonzalez has cited no law indicating that she was incarcerated in this case prior to being arrested. Putting Gonzalez and the Canyon County jail on notice of the intent to serve the Bannock County arrest warrant prior to her release from the Canyon County jail did not render her incarceration “for the offense” in this case. Her argument that an entry entitled “hold” in a jail record constituted incarceration in this case fails as a matter of fact and law, even if it were preserved for appellate review.

CONCLUSION

The state respectfully requests this Court to affirm the district court’s order granting in part Gonzalez’ motion for credit for time served.

DATED this 25th day of August, 2017.

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 25th day of August, 2017, served a true and correct copy of the foregoing BRIEF OF RESPONDENT by emailing an electronic copy to:

SALLY J. COOLEY
DEPUTY STATE APPELLATE PUBLIC DEFENDER

at the following email address: briefs@sapd.state.id.us

/s/ Kenneth K. Jorgensen
KENNETH K. JORGENSEN
Deputy Attorney General

KKJ/vr